

REFERENCE TITLE: **unauthorized aliens; licensing**

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

## **SB 1335**

Introduced by

Senator Pearce; Representatives Antenori, Gowan, Seel; Senators Allen S, Gould, Gray L, Harper, Melvin, Verschoor; Representatives Crump, Kavanagh, Montenegro, Nichols, Stevens

### **AN ACT**

AMENDING SECTIONS 23-212, 23-212.01, 23-214 AND 41-1080, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 7.2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1080.01; AMENDING SECTION 41-4401, ARIZONA REVISED STATUTES; RELATING TO UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-212, Arizona Revised Statutes, is amended to read:

23-212. Knowingly employing unauthorized aliens: prohibition: false and frivolous complaints: violation: classification: license suspension and revocation: affirmative defense

A. An employer shall not knowingly employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

B. The attorney general shall prescribe a complaint form for a person to allege a violation of subsection A of this section. The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly knowingly employs an unauthorized alien, the attorney general or county attorney shall investigate whether the employer has violated subsection A of this section. If a complaint is received but is not submitted on a prescribed complaint form, the attorney general or county attorney may investigate whether the employer has violated subsection A of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The attorney general or county attorney shall not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or any other local law enforcement agency may assist in investigating a complaint. THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY MAY TAKE EVIDENCE, ADMINISTER OATHS OR AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND TESTIMONY OF WITNESSES, CAUSE DEPOSITIONS TO BE TAKEN AND REQUIRE BY SUBPOENA DUCES TECUM THE PRODUCTION OF BOOKS, PAPERS AND OTHER DOCUMENTS THAT ARE NECESSARY FOR THE ENFORCEMENT OF THIS SECTION. PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION ARE EXEMPT FROM TITLE 38, CHAPTER 3, ARTICLE 3.1. IF THE EMPLOYER OR ANY OTHER PERSON REFUSES TO OBEY A SUBPOENA OR FAILS TO ANSWER QUESTIONS AS PROVIDED BY THIS SUBSECTION, THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY MAY APPLY TO THE SUPERIOR COURT IN THE MANNER PROVIDED IN SECTION 12-2212. SUBPOENAS UNDER THIS SECTION MAY BE SERVED BY PERSONAL SERVICE OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code section 1373(c). A state, county or local official shall not attempt to independently make a

1 final determination on whether an alien is authorized to work in the United  
2 States. An alien's immigration status or work authorization status shall be  
3 verified with the federal government pursuant to 8 United States Code section  
4 1373(c). A person who knowingly files a false and frivolous complaint under  
5 this subsection is guilty of a class 3 misdemeanor.

6 C. If, after an investigation, the attorney general or county attorney  
7 determines that the complaint is not false and frivolous:

8 1. The attorney general or county attorney shall notify the United  
9 States immigration and customs enforcement of the unauthorized alien.

10 2. The attorney general or county attorney shall notify the local law  
11 enforcement agency of the unauthorized alien.

12 3. The attorney general shall notify the appropriate county attorney  
13 to bring an action pursuant to subsection D of this section if the complaint  
14 was originally filed with the attorney general.

15 D. An action for a violation of subsection A of this section shall be  
16 brought against the employer by the county attorney in the county where the  
17 unauthorized alien employee is or was employed by the employer. The county  
18 attorney shall not bring an action against any employer for any violation of  
19 subsection A of this section that occurs before January 1, 2008. A second  
20 violation of this section shall be based only on an unauthorized alien who is  
21 or was employed by the employer after an action has been brought for a  
22 violation of subsection A of this section or section 23-212.01, subsection A.

23 E. For any action in superior court under this section, the court  
24 shall expedite the action, including assigning the hearing at the earliest  
25 practicable date.

26 F. On a finding of a violation of subsection A of this section:

27 1. For a first violation, as described in paragraph 3 of this  
28 subsection, the court:

29 (a) Shall order the employer to terminate the employment of all  
30 unauthorized aliens.

31 (b) Shall order the employer to be subject to a three year  
32 probationary period for the business location where the unauthorized alien  
33 performed work. During the probationary period the employer shall file  
34 quarterly reports in the form provided in section 23-722.01 with the county  
35 attorney of each new employee who is hired by the employer at the business  
36 location where the unauthorized alien performed work.

37 (c) Shall order the employer to file a signed sworn affidavit with the  
38 county attorney within three business days after the order is issued. The  
39 affidavit shall state that the employer has terminated the employment of all  
40 unauthorized aliens in this state and that the employer will not  
41 intentionally or knowingly employ an unauthorized alien in this state. The  
42 court shall order the appropriate agencies to suspend all licenses subject to  
43 this subdivision that are held by the employer if the employer fails to file  
44 a signed sworn affidavit with the county attorney within three business days  
45 after the order is issued. All licenses that are suspended under this

1 subdivision shall remain suspended until the employer files a signed sworn  
2 affidavit with the county attorney. Notwithstanding any other law, on filing  
3 of the affidavit the suspended licenses shall be reinstated immediately by  
4 the appropriate agencies. For the purposes of this subdivision, the licenses  
5 that are subject to suspension under this subdivision are all licenses that  
6 are held by the employer specific to the business location where the  
7 unauthorized alien performed work. If the employer does not hold a license  
8 specific to the business location where the unauthorized alien performed  
9 work, but a license is necessary to operate the employer's business in  
10 general, the licenses that are subject to suspension under this subdivision  
11 are all licenses that are held by the employer at the employer's primary  
12 place of business. On receipt of the court's order and notwithstanding any  
13 other law, the appropriate agencies shall suspend the licenses according to  
14 the court's order. The court shall send a copy of the court's order to the  
15 attorney general and the attorney general shall maintain the copy pursuant to  
16 subsection G of this section.

17 (d) May order the appropriate agencies to suspend all licenses  
18 described in subdivision (c) of this paragraph that are held by the employer  
19 for not to exceed ten business days. The court shall base its decision to  
20 suspend under this subdivision on any evidence or information submitted to it  
21 during the action for a violation of this subsection and shall consider the  
22 following factors, if relevant:

- 23 (i) The number of unauthorized aliens employed by the employer.
- 24 (ii) Any prior misconduct by the employer.
- 25 (iii) The degree of harm resulting from the violation.
- 26 (iv) Whether the employer made good faith efforts to comply with any  
27 applicable requirements.
- 28 (v) The duration of the violation.
- 29 (vi) The role of the directors, officers or principals of the employer  
30 in the violation.
- 31 (vii) Any other factors the court deems appropriate.

32 2. For a second violation, as described in paragraph 3 of this  
33 subsection, the court shall order the appropriate agencies to permanently  
34 revoke all licenses that are held by the employer specific to the business  
35 location where the unauthorized alien performed work. If the employer does  
36 not hold a license specific to the business location where the unauthorized  
37 alien performed work, but a license is necessary to operate the employer's  
38 business in general, the court shall order the appropriate agencies to  
39 permanently revoke all licenses that are held by the employer at the  
40 employer's primary place of business. On receipt of the order and  
41 notwithstanding any other law, the appropriate agencies shall immediately  
42 revoke the licenses.

43 3. The violation shall be considered:

- 44 (a) A first violation by an employer at a business location if the  
45 violation did not occur during a probationary period ordered by the court

under this subsection or section 23-212.01, subsection F for that employer's business location.

(b) A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this subsection or section 23-212.01, subsection F for that employer's business location.

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection F of this section and shall maintain a database of the employers and business locations that have a first violation of subsection A of this section and make the court orders available on the attorney general's website.

H. On determining whether an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 United States Code section 1373(c). The federal government's determination creates a rebuttable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 United States Code section 1373(c).

I. For the purposes of this section, proof of verifying the employment authorization of an employee through the e-verify program creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien.

J. For the purposes of this section, an employer that establishes that it has complied in good faith with the requirements of 8 United States Code section 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. An employer is considered to have complied with the requirements of 8 United States Code section 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

K. AN EMPLOYER IS NOT ENTRAPPED UNDER THIS SECTION IF THE EMPLOYER WAS PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO VIOLATE SUBSECTION A OF THIS SECTION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITY.

Sec. 2. Section 23-212.01, Arizona Revised Statutes, is amended to read:

23-212.01. Intentionally employing unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not intentionally employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this

1 state, the employer intentionally contracts with an unauthorized alien or  
2 with a person who employs or contracts with an unauthorized alien to perform  
3 the labor, the employer violates this subsection.

4 B. The attorney general shall prescribe a complaint form for a person  
5 to allege a violation of subsection A of this section. The complainant shall  
6 not be required to list the complainant's social security number on the  
7 complaint form or to have the complaint form notarized. On receipt of a  
8 complaint on a prescribed complaint form that an employer allegedly  
9 intentionally employs an unauthorized alien, the attorney general or county  
10 attorney shall investigate whether the employer has violated subsection A of  
11 this section. If a complaint is received but is not submitted on a  
12 prescribed complaint form, the attorney general or county attorney may  
13 investigate whether the employer has violated subsection A of this section.  
14 This subsection shall not be construed to prohibit the filing of anonymous  
15 complaints that are not submitted on a prescribed complaint form. The  
16 attorney general or county attorney shall not investigate complaints that are  
17 based solely on race, color or national origin. A complaint that is  
18 submitted to a county attorney shall be submitted to the county attorney in  
19 the county in which the alleged unauthorized alien is or was employed by the  
20 employer. The county sheriff or any other local law enforcement agency may  
21 assist in investigating a complaint. THE ATTORNEY GENERAL OR THE COUNTY  
22 ATTORNEY MAY TAKE EVIDENCE, ADMINISTER OATHS OR AFFIRMATIONS, ISSUE SUBPOENAS  
23 REQUIRING ATTENDANCE AND TESTIMONY OF WITNESSES, CAUSE DEPOSITIONS TO BE  
24 TAKEN AND REQUIRE BY SUBPOENA DUCES TECUM THE PRODUCTION OF BOOKS, PAPERS AND  
25 OTHER DOCUMENTS THAT ARE NECESSARY FOR THE ENFORCEMENT OF THIS SECTION.  
26 PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION ARE EXEMPT  
27 FROM TITLE 38, CHAPTER 3, ARTICLE 3.1. IF THE EMPLOYER OR ANY OTHER PERSON  
28 REFUSES TO OBEY A SUBPOENA OR FAILS TO ANSWER QUESTIONS AS PROVIDED BY THIS  
29 SUBSECTION, THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY MAY APPLY TO THE  
30 SUPERIOR COURT IN THE MANNER PROVIDED IN SECTION 12-2212. SUBPOENAS UNDER  
31 THIS SECTION MAY BE SERVED BY PERSONAL SERVICE OR CERTIFIED MAIL, RETURN  
32 RECEIPT REQUESTED. When investigating a complaint, the attorney general or  
33 county attorney shall verify the work authorization of the alleged  
34 unauthorized alien with the federal government pursuant to 8 United States  
35 Code section 1373(c). A state, county or local official shall not attempt to  
36 independently make a final determination on whether an alien is authorized to  
37 work in the United States. An alien's immigration status or work  
38 authorization status shall be verified with the federal government pursuant  
39 to 8 United States Code section 1373(c). A person who knowingly files a  
40 false and frivolous complaint under this subsection is guilty of a class 3  
41 misdemeanor.

42 C. If, after an investigation, the attorney general or county attorney  
43 determines that the complaint is not false and frivolous:

44 1. The attorney general or county attorney shall notify the United  
45 States immigration and customs enforcement of the unauthorized alien.

1           2. The attorney general or county attorney shall notify the local law  
2 enforcement agency of the unauthorized alien.

3           3. The attorney general shall notify the appropriate county attorney  
4 to bring an action pursuant to subsection D of this section if the complaint  
5 was originally filed with the attorney general.

6           D. An action for a violation of subsection A of this section shall be  
7 brought against the employer by the county attorney in the county where the  
8 unauthorized alien employee is or was employed by the employer. The county  
9 attorney shall not bring an action against any employer for any violation of  
10 subsection A of this section that occurs before January 1, 2008. A second  
11 violation of this section shall be based only on an unauthorized alien who is  
12 or was employed by the employer after an action has been brought for a  
13 violation of subsection A of this section or section 23-212, subsection A.

14           E. For any action in superior court under this section, the court  
15 shall expedite the action, including assigning the hearing at the earliest  
16 practicable date.

17           F. On a finding of a violation of subsection A of this section:

18           1. For a first violation, as described in paragraph 3 of this  
19 subsection, the court shall:

20           (a) Order the employer to terminate the employment of all unauthorized  
21 aliens.

22           (b) Order the employer to be subject to a five year probationary  
23 period for the business location where the unauthorized alien performed work.  
24 During the probationary period the employer shall file quarterly reports in  
25 the form provided in section 23-722.01 with the county attorney of each new  
26 employee who is hired by the employer at the business location where the  
27 unauthorized alien performed work.

28           (c) Order the appropriate agencies to suspend all licenses described  
29 in subdivision (d) of this paragraph that are held by the employer for a  
30 minimum of ten days. The court shall base its decision on the length of the  
31 suspension under this subdivision on any evidence or information submitted to  
32 it during the action for a violation of this subsection and shall consider  
33 the following factors, if relevant:

34           (i) The number of unauthorized aliens employed by the employer.

35           (ii) Any prior misconduct by the employer.

36           (iii) The degree of harm resulting from the violation.

37           (iv) Whether the employer made good faith efforts to comply with any  
38 applicable requirements.

39           (v) The duration of the violation.

40           (vi) The role of the directors, officers or principals of the employer  
41 in the violation.

42           (vii) Any other factors the court deems appropriate.

43           (d) Order the employer to file a signed sworn affidavit with the  
44 county attorney. The affidavit shall state that the employer has terminated  
45 the employment of all unauthorized aliens in this state and that the employer

1 will not intentionally or knowingly employ an unauthorized alien in this  
2 state. The court shall order the appropriate agencies to suspend all  
3 licenses subject to this subdivision that are held by the employer if the  
4 employer fails to file a signed sworn affidavit with the county attorney  
5 within three business days after the order is issued. All licenses that are  
6 suspended under this subdivision for failing to file a signed sworn affidavit  
7 shall remain suspended until the employer files a signed sworn affidavit with  
8 the county attorney. For the purposes of this subdivision, the licenses that  
9 are subject to suspension under this subdivision are all licenses that are  
10 held by the employer specific to the business location where the unauthorized  
11 alien performed work. If the employer does not hold a license specific to  
12 the business location where the unauthorized alien performed work, but a  
13 license is necessary to operate the employer's business in general, the  
14 licenses that are subject to suspension under this subdivision are all  
15 licenses that are held by the employer at the employer's primary place of  
16 business. On receipt of the court's order and notwithstanding any other law,  
17 the appropriate agencies shall suspend the licenses according to the court's  
18 order. The court shall send a copy of the court's order to the attorney  
19 general and the attorney general shall maintain the copy pursuant to  
20 subsection G of this section.

21 2. For a second violation, as described in paragraph 3 of this  
22 subsection, the court shall order the appropriate agencies to permanently  
23 revoke all licenses that are held by the employer specific to the business  
24 location where the unauthorized alien performed work. If the employer does  
25 not hold a license specific to the business location where the unauthorized  
26 alien performed work, but a license is necessary to operate the employer's  
27 business in general, the court shall order the appropriate agencies to  
28 permanently revoke all licenses that are held by the employer at the  
29 employer's primary place of business. On receipt of the order and  
30 notwithstanding any other law, the appropriate agencies shall immediately  
31 revoke the licenses.

32 3. The violation shall be considered:

33 (a) A first violation by an employer at a business location if the  
34 violation did not occur during a probationary period ordered by the court  
35 under this subsection or section 23-212, subsection F for that employer's  
36 business location.

37 (b) A second violation by an employer at a business location if the  
38 violation occurred during a probationary period ordered by the court under  
39 this subsection or section 23-212, subsection F for that employer's business  
40 location.

41 G. The attorney general shall maintain copies of court orders that are  
42 received pursuant to subsection F of this section and shall maintain a  
43 database of the employers and business locations that have a first violation  
44 of subsection A of this section and make the court orders available on the  
45 attorney general's website.



1 H. On determining whether an employee is an unauthorized alien, the  
 2 court shall consider only the federal government's determination pursuant to  
 3 8 United States Code section 1373(c). The federal government's determination  
 4 creates a rebuttable presumption of the employee's lawful status. The court  
 5 may take judicial notice of the federal government's determination and may  
 6 request the federal government to provide automated or testimonial  
 7 verification pursuant to 8 United States Code section 1373(c).

8 I. For the purposes of this section, proof of verifying the employment  
 9 authorization of an employee through the e-verify program creates a  
 10 rebuttable presumption that an employer did not intentionally employ an  
 11 unauthorized alien.

12 J. For the purposes of this section, an employer that establishes that  
 13 it has complied in good faith with the requirements of 8 United States Code  
 14 section 1324a(b) establishes an affirmative defense that the employer did not  
 15 intentionally employ an unauthorized alien. An employer is considered to  
 16 have complied with the requirements of 8 United States Code section 1324a(b),  
 17 notwithstanding an isolated, sporadic or accidental technical or procedural  
 18 failure to meet the requirements, if there is a good faith attempt to comply  
 19 with the requirements.

20 K. AN EMPLOYER IS NOT ENTRAPPED UNDER THIS SECTION IF THE EMPLOYER WAS  
 21 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND LAW ENFORCEMENT  
 22 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO  
 23 VIOLATE SUBSECTION A OF THIS SECTION. IT IS NOT ENTRAPMENT FOR LAW  
 24 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR  
 25 IDENTITY.

26 Sec. 3. Section 23-214, Arizona Revised Statutes, is amended to read:

27 23-214. Verification of employment eligibility: e-verify  
 28 program; civil penalty; economic development  
 29 incentives; list of registered employers

30 A. After December 31, 2007, every employer, after hiring an employee,  
 31 shall verify the employment eligibility of the employee through the e-verify  
 32 program. ON RECEIPT OF A FAILED VERIFICATION RESULT, THE EMPLOYER SHALL  
 33 NOTIFY THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AND THE COUNTY  
 34 ATTORNEY OF THE EMPLOYEE AND THE EMPLOYEE'S FAILED VERIFICATION. AN EMPLOYER  
 35 WHO VIOLATES THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY OF \_\_\_\_\_ DOLLARS  
 36 FOR EACH VIOLATION. THE ATTORNEY GENERAL SHALL ENFORCE THIS SUBSECTION. THE  
 37 ATTORNEY GENERAL MAY COLLECT THE CIVIL PENALTIES AND SHALL DEPOSIT, PURSUANT  
 38 TO SECTIONS 35-146 AND 35-147, ANY CIVIL PENALTIES COLLECTED IN THE STATE  
 39 GENERAL FUND.

40 B. In addition to any other requirement for an employer to receive an  
 41 economic development incentive from a government entity, the employer shall  
 42 register with and participate in the e-verify program. Before receiving the  
 43 economic development incentive, the employer shall provide proof to the  
 44 government entity that the employer is registered with and is participating  
 45 in the e-verify program. If the government entity determines that the

1 employer is not complying with this subsection, the government entity shall  
 2 notify the employer by certified mail of the government entity's  
 3 determination of noncompliance and the employer's right to appeal the  
 4 determination. On a final determination of noncompliance, the employer shall  
 5 repay all monies received as an economic development incentive to the  
 6 government entity within thirty days of the final determination. For the  
 7 purposes of this subsection:

8 1. "Economic development incentive" means any grant, loan or  
 9 performance-based incentive from any government entity that is awarded after  
 10 September 30, 2008. Economic development incentive does not include any tax  
 11 provision under title 42 or 43.

12 2. "Government entity" means this state and any political subdivision  
 13 of this state that receives and uses tax revenues.

14 C. Every three months the attorney general shall request from the  
 15 United States department of homeland security a list of employers from this  
 16 state that are registered with the e-verify program. On receipt of the list  
 17 of employers, the attorney general shall make the list available on the  
 18 attorney general's website.

19 Sec. 4. Section 41-1080, Arizona Revised Statutes, is amended to read:

20 41-1080. Licensing eligibility; statement of citizenship or  
 21 alien status; documentation; applicability; rules;  
 22 definitions

23 A. After September 30, 2008 AND SUBJECT TO SUBSECTIONS C AND D, an  
 24 agency or political subdivision of this state shall not issue a license to an  
 25 individual if the individual does not ~~present~~ EXECUTE A STATEMENT OF  
 26 CITIZENSHIP OR ALIEN STATUS AND PROVIDE DOCUMENTATION OF THAT STATUS BY  
 27 PRESENTING any of the following documents to the agency or political  
 28 subdivision indicating that the individual's presence in the United States is  
 29 authorized under federal law:

30 1. An Arizona driver license issued after 1996 or an Arizona  
 31 nonoperating identification license.

32 2. A driver license issued by a state that verifies lawful presence in  
 33 the United States.

34 3. A birth certificate or delayed birth certificate issued in any  
 35 state, territory or possession of the United States.

36 4. A United States certificate of birth abroad.

37 5. A United States passport.

38 6. A foreign passport with a United States visa.

39 7. An I-94 form with a photograph.

40 8. A United States citizenship and immigration services employment  
 41 authorization document or refugee travel document.

42 9. A United States certificate of naturalization.

43 10. A United States certificate of citizenship.

44 11. A tribal certificate of Indian blood.

45 12. A tribal or bureau of Indian affairs affidavit of birth.

B. This section does not apply to an individual, if all of the following apply:

1. The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.

2. The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

C. IF, PURSUANT TO SUBSECTION A, AN INDIVIDUAL HAS AFFIRMATIVELY ESTABLISHED CITIZENSHIP OF THE UNITED STATES OR A FORM OF NONEXPIRING WORK AUTHORIZATION ISSUED BY THE FEDERAL GOVERNMENT, THE INDIVIDUAL, ON RENEWAL OR REINSTATEMENT OF A LICENSE, IS NOT REQUIRED TO EXECUTE A SUBSEQUENT STATEMENT OF CITIZENSHIP OR ALIEN STATUS OR PROVIDE SUBSEQUENT DOCUMENTATION OF THAT STATUS.

D. IF, ON RENEWAL OR REINSTATEMENT OF A LICENSE, AN INDIVIDUAL HOLDS A LIMITED FORM OF WORK AUTHORIZATION ISSUED BY THE FEDERAL GOVERNMENT, THE INDIVIDUAL SHALL EXECUTE A SUBSEQUENT STATEMENT OF CITIZENSHIP OR ALIEN STATUS AND PROVIDE DOCUMENTATION OF THAT STATUS.

E. THE CORPORATION COMMISSION SHALL ADOPT RULES REGARDING THE PROPER INDIVIDUAL WHO MUST COMPLY WITH THIS SECTION FOR LICENSES ISSUED BY THE CORPORATION COMMISSION.

~~C.~~ F. For the purposes of this section:

1. "Agency" means any agency, department, board or commission of this state or any political subdivision of this state that issues a license for the purposes of operating a business in this state.

2. "License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.

Sec. 5. Title 41, chapter 6, article 7.2, Arizona Revised Statutes, is amended by adding section 41-1080.01, to read:

41-1080.01. Licensing audits; employee verification; suspension; definitions

A. AN AGENCY OR POLITICAL SUBDIVISION OF THIS STATE SHALL NOT ISSUE, RENEW OR REINSTATE A LICENSE TO AN INDIVIDUAL IF THE INDIVIDUAL DOES NOT VERIFY THE EMPLOYMENT ELIGIBILITY OF EMPLOYEES THROUGH THE E-VERIFY PROGRAM PURSUANT TO SECTION 23-214, SUBSECTION A.

B. BEGINNING JANUARY 1, 2010, EACH AGENCY AND POLITICAL SUBDIVISION OF THIS STATE THAT ISSUES LICENSES SHALL ANNUALLY CONDUCT RANDOM AUDITS OF UP TO FIVE PER CENT OF ALL INDIVIDUALS WHO HAVE BEEN ISSUED A LICENSE TO DETERMINE COMPLIANCE WITH SECTION 23-214, SUBSECTION A. IF AN AGENCY OR POLITICAL SUBDIVISION IS CONDUCTING AN AUDIT OF AN INDIVIDUAL UNDER THIS SECTION, ANOTHER AGENCY OR POLITICAL SUBDIVISION SHALL NOT SIMULTANEOUSLY CONDUCT A SEPARATE AUDIT OF THE INDIVIDUAL FOR OTHER LICENSES THAT ARE ISSUED TO THE INDIVIDUAL. THE AUDIT BY THE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE

1 SHALL CONSIST OF VERIFYING WHETHER THE INDIVIDUAL HAS COMPLIED WITH SECTION  
2 23-214, SUBSECTION A.

3 C. IF AN AUDIT DETERMINES THAT AN INDIVIDUAL HAS NOT COMPLIED WITH  
4 SECTION 23-214, SUBSECTION A, THE AGENCY OR POLITICAL SUBDIVISION SHALL MAIL  
5 A WRITTEN NOTICE TO THE INDIVIDUAL INDICATING THE NONCOMPLIANCE. THE  
6 INDIVIDUAL SHALL REGISTER WITH THE E-VERIFY PROGRAM WITHIN THIRTY DAYS AND  
7 NOTIFY THE AGENCY OR POLITICAL SUBDIVISION WITH PROOF OF THE REGISTRATION.  
8 IF THE AGENCY OR POLITICAL SUBDIVISION DOES NOT RECEIVE NOTIFICATION AND  
9 PROOF OF THE REGISTRATION WITH THE E-VERIFY PROGRAM WITHIN THIRTY DAYS, THE  
10 AGENCY OR POLITICAL SUBDIVISION SHALL SUSPEND THE INDIVIDUAL'S LICENSE UNTIL  
11 THE INDIVIDUAL REGISTERS WITH THE E-VERIFY PROGRAM.

12 D. FOR THE PURPOSES OF THIS SECTION:

13 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS  
14 STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE THAT ISSUES A LICENSE FOR  
15 THE PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

16 2. "E-VERIFY PROGRAM" MEANS THE EMPLOYMENT VERIFICATION PILOT PROGRAM  
17 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
18 AND THE SOCIAL SECURITY ADMINISTRATION OR ANY OF ITS SUCCESSOR PROGRAMS.

19 3. "LICENSE" MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL,  
20 REGISTRATION, CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY  
21 LAW AND THAT IS ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS  
22 IN THIS STATE.

23 Sec. 6. Section 41-4401, Arizona Revised Statutes, is amended to read:  
24 41-4401. Government procurement; e-verify requirement;  
25 definitions

26 A. After September 30, 2008, a government entity shall not award a  
27 contract to any contractor or subcontractor that fails to comply with section  
28 23-214, subsection A **FOR THE CONTRACTOR'S OR SUBCONTRACTOR'S EMPLOYEES THAT**  
29 **ARE DIRECTLY PERFORMING THE WORK UNDER THE CONTRACT IN THIS STATE.** Every  
30 government entity shall ensure that every government entity contractor and  
31 subcontractor complies with the federal immigration laws and regulations that  
32 relate to their employees and section 23-214, subsection A. Every government  
33 entity shall require that every government entity contract include all of the  
34 following provisions:

35 1. That each contractor and subcontractor warrants their compliance  
36 with all federal immigration laws and regulations that relate to their  
37 employees and their compliance with section 23-214, subsection A **FOR THEIR**  
38 **EMPLOYEES THAT ARE DIRECTLY PERFORMING THE WORK UNDER THE CONTRACT IN THIS**  
39 **STATE.**

40 2. That a breach of a warranty under paragraph 1 **OF THIS SUBSECTION**  
41 shall be deemed a material breach of the contract that is subject to  
42 penalties up to and including termination of the contract.

43 3. That the government entity retains the legal right to inspect the  
44 papers of any contractor or subcontractor employee who works on the contract

1 to ensure that the contractor or subcontractor is complying with the warranty  
2 under paragraph 1 **OF THIS SUBSECTION**.

3 B. Every government entity that enters into a contract shall establish  
4 procedures to conduct random verification of the employment records of  
5 government entity contractors and subcontractors to ensure that the  
6 contractors and subcontractors are complying with their warranties.

7 C. A government entity shall not deem a government entity contractor  
8 or subcontractor in material breach of a contract if the contractor or  
9 subcontractor establishes that it has complied with the employment  
10 verification provisions prescribed by sections 274a and 274b of the federal  
11 immigration and nationality act and the e-verify requirements prescribed by  
12 section 23-214, subsection A.

13 D. For the purposes of this section:

14 1. "Contract" means all types of government entity agreements,  
15 regardless of what they may be called, for the procurement of services in  
16 this state.

17 2. "Contractor" means any person who has a contract with a government  
18 entity.

19 3. "E-verify program" means the employment verification pilot program  
20 as jointly administered by the United States department of homeland security  
21 and the social security administration or any of its successor programs.

22 4. "Government entity" means this state and any political subdivision  
23 of this state that receives and uses tax revenues.

24 5. "Services" means the furnishing of labor, time or effort in this  
25 state by a contractor or subcontractor. Services include construction or  
26 maintenance of any structure, building or transportation facility or  
27 improvement of real property.

28 6. "Subcontractor" means a person who contracts to perform work or  
29 render service to a contractor or to another subcontractor as a part of a  
30 contract with a government entity.